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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 MICKEY ALONZO BRYANT,

10 Plaintiff,

11 v.

12 KING COUNTY CORRECTIONAL
FACILITY,

13 Defendant.
14

CASE NO. C17-1153-JLR-MAT

ORDER DECLINING TO SERVE AND
GRANTING LEAVE TO AMEND

15 Plaintiff, proceeding pro se and *in forma pauperis*, submitted a proposed 42 U.S.C. §
16 1983 civil rights complaint. (Dkt. 1.) Plaintiff is currently incarcerated at Washington State
17 Penitentiary. He alleges he was denied medication for two months while housed at King County
18 Correctional Facility (KCCF) and names KCCF as the defendant in this lawsuit.

19 In order to sustain a § 1983 claim, plaintiff must show (1) that he suffered a violation of
20 rights protected by the Constitution or created by federal statute, and (2) that the violation was
21 proximately caused by a person acting under color of state or federal law. *West v. Atkins*, 487
22 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Plaintiff must
23 provide more than conclusory allegations; he must set forth specific, plausible facts to support

1 his claims. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-83 (2009).

2 Having reviewed the proposed complaint, the Court notes the following deficiencies:

3 (1) KCCF is an entity of King County and is not a proper defendant in this action.
4 See *Nolan v. Snohomish County*, 59 Wn. App. 876, 883, 802 P.2d 792 (1990) (“[I]n a legal
5 action involving a county, the county itself is the only legal entity capable of suing and being
6 sued.”)¹ Plaintiff, as such, fails to identify a defendant subject to suit.

7 Plaintiff is advised that, to name an individual defendant, he must allege facts showing
8 how individually named defendants caused or personally participated in causing the harm alleged
9 in the complaint. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). Supervisory personnel
10 may not be held liable for actions of subordinates under a theory of vicarious liability. *Taylor v.*
11 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989). “A supervisor may be liable only if (1) he or she is
12 personally involved in the constitutional deprivation, or (2) there is ‘a sufficient causal
13 connection between the supervisor’s wrongful conduct and the constitutional violation.’” *Snow*
14 *v. McDaniel*, 681 F.3d 978, 989 (9th Cir. 2012) (quoting *Hansen v. Black*, 885 F.2d 642, 646
15 (9th Cir. 1989)), *overruled in part on other grounds by Peralta v. Dillard*, 744 F.3d 1076, 1083
16 (9th Cir. 2014).

17 A defendant must be clearly identified in the caption of the complaint and as a party to
18 the complaint, and the statement of the claim must include facts setting forth how each defendant
19 violated plaintiff’s constitutional rights. This matter may proceed only if plaintiff identifies a
20 defendant subject to suit and sets forth facts supporting the statement of a claim against that

21 ¹ A municipality or local government unit, like King County, can be sued as a “person” under §
22 1983. *Monell v. Department of Social Servs.*, 436 U.S. 658, 691-94 (1978); *Miranda v. Clark County,*
23 *Nev.*, 319 F.3d 465, 469 (9th Cir. 2003). However, a municipality or local governmental unit cannot be
held liable under § 1983 solely because it employs a tortfeasor. *Monell*, 436 U.S. at 691. A plaintiff
seeking to impose liability on a municipality or local governmental unit under § 1983 must identify
municipal or county “policy” or “custom” that caused his or her injury. *Bd. of the Cnty. Comm’rs of*
Bryant Cnty. v. Brown, 520 U.S. 397, 403 (1997).

1 defendant.

2 (2) Plaintiff avers he was denied medication he needed. He may be alleging a
3 violation of his Eighth Amendment rights. However, to maintain an unconstitutional punishment
4 claim based on medical treatment, “an inmate must show ‘deliberate indifference to serious
5 medical needs.’” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *Estelle v. Gamble*,
6 429 U.S. 97, 106 (1976)). A prison official may be deemed to have been deliberately indifferent
7 to serious medical needs “when they deny, delay, or intentionally interfere with medical
8 treatment.” *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (sources and internal quotation
9 marks omitted). A prison official may be held liable “only if he knows that inmates face a
10 substantial risk of serious harm and disregards that risk by failing to take reasonable measures to
11 abate it.” *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). A “defendant must purposefully ignore
12 or fail to respond to a prisoner’s pain or possible medical need in order for deliberate
13 indifference to be established.” *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992),
14 *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997). The
15 defendant “must not only ‘be aware of facts from which the inference could be drawn that a
16 substantial risk of serious harm exists,’ but that person ‘must also draw the inference.’” *Toguchi*
17 *v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting *Farmer*, 511 U.S. at 837). “A medical
18 need is serious when the failure to treat it could result in significant injury or the unnecessary and
19 wanton infliction of pain.” *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239 (9th Cir. 2016) (citing
20 *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)).

21 The indifference to medical needs must be substantial; a constitutional violation is not
22 established by negligence or “an inadvertent failure to provide adequate medical care[.]” *Estelle*,
23 429 U.S. at 105-06; *Anthony v. Dowdle*, 853 F.2d 741, 743 (9th Cir. 1988). Nor does a

1 difference of opinion between an inmate and medical authorities regarding proper medical
2 treatment give rise to a § 1983 claim. *Franklin v. Oregon, State Welfare Div.*, 662 F.2d 1337,
3 1344 (9th Cir. 1981). *See also Estelle*, 529 U.S. at 106 (“Medical malpractice does not become a
4 constitutional violation merely because the victim is a prisoner.”) A mere delay of treatment,
5 standing alone, does not suffice to state a claim of deliberate indifference; the inmate must show
6 the delay led to further injury. *Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404,
7 407 (9th Cir. 1985) (citing *Estelle*, 429 U.S. at 106). *Accord Hallett*, 296 F.3d at 745-46;
8 *McGuckin*, 974 F.2d at 1059-60.

9 Plaintiff’s proposed complaint does not set forth a claim rising to the level of an Eighth
10 Amendment violation. If plaintiff cannot set forth facts supporting a claim of deliberate
11 indifference to his serious medical needs, he may not proceed with a § 1983 claim based on
12 medical treatment.

13 (3) Because of the deficiencies described above, the Court declines to serve the
14 complaint or to direct that an answer be filed. However, plaintiff is granted leave to amend his
15 complaint, if possible, to correct the identified deficiencies. Within **thirty (30) days** from the
16 date of this Order, plaintiff may submit an amended complaint that corrects the deficiencies
17 outlined above. The amended complaint must be filed under the same case number as this one,
18 and will operate as a complete substitute for, rather than a mere supplement to, the present
19 complaint. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). If no amended
20 complaint is timely filed, or if plaintiff files an amended complaint that fails to correct the
21 deficiencies identified above, the Court may recommend that this matter be dismissed.

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(4) The Clerk is directed to send to plaintiff a copy of this Order and a blank copy of a civil rights complaint form, and to send a copy of this Order to the Honorable James L. Robart.

DATED this 7th day of September, 2017.


Mary Alice Theiler
United States Magistrate Judge